IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

COMPANY APPLICATION NO.695 OF 2006
IN
COMPANY PETITION NO.149 OF 1997

Rajendra K. Walia ..Applicant.

Vs.

The Official Liquidator
M/s. Decal Aluminium Industries
& Export Pvt. Ltd. (in liqn.) & anr. ..Respondents.

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Mr. C.N. Mehta for the Applicant.
Ms. Sarojini Patil i/b Singhania & Co. for the Company.
Mr. Kedar Dighe for the Official Liquidator.

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CORAM: **DR. D.Y. CHANDRACHUD, J.**

8th June, 2007.

P.C. :

1. The relief that has been sought by the Applicant in the present proceedings is for a direction to the Official Liquidator to release payment towards security charges, amounting in all to Rs.8,49,995.09 for the period between 17th June, 1999 and 21st September, 2004.

2. By an order dated 16th March, 1999 the company (Decal

Aluminium Industries and Export Pvt. Ltd.) was ordered to be wound up and the Official Liquidator came to be appointed as Liquidator of the business and assets of the company. A Company Application (Company Application 557 of 1999) which was taken out for setting aside the order of winding up was dismissed on 25th January, 2000. The order of dismissal of the Company Application was confirmed in appeal on 4th July, 2000. A Review Petition was thereafter taken out in which on 21st December, 2000 this Court directed the Review Petitioner to pay an amount of Rs.2,40,000/- to the Official Liquidator on account of the expenses which were incurred by the Liquidator. The Liquidator was directed not to take any further steps pending the disposal of the Review Petition. The payment was not made.

3. The Liquidator took possession of the registered office on 17th August, 1999, of the factory on 11th August, 1999 and had submitted a report dated 5th December, 2002 seeking ratification of his action of appointing the security guards and a direction was also sought to the ex-managing director of the company to pay the security charges. Prayer clause (a), in the aforesaid terms was granted by an

order dated 8th April, 2003 passed by Mr. Justice F.I. Rebello. The Liquidator had also sought directions permitting him to take out contempt proceedings against the ex- Managing Director of the company for his failure to deposit an amount of Rs.2.40 lacs as directed by the Division Bench in its order dated 21st December, 2000. On this aspect the learned Single Judge while dealing with the report of the Liquidator observed that it would be open to the Liquidator to move the Appellate Bench, where the Review Petition was pending for whatever reliefs were sought in the matter of non compliance of the directions issued by the Division Bench.

4. A Company Application (Company Application 396 of 2001) was taken out on behalf of Walvekar Hatcheries Limited claiming that the properties which have been attached by the Official Liquidator do not belong to the company in liquidation but to the Applicant. An interim order was passed thereon on by a Learned Single Judge on 26th August, 2004. Subsequently on 14th December, 2006 a Learned Single Judge of this Court issued a direction in which it was recorded that Company Application 396 of 2001 had been withdrawn. The

Official Liquidator was directed to take steps to recover possession unless an order of a Court of competent jurisdiction was drawn to his attention. On the report of the Official Liquidator directions were issued on 15th March, 2007 permitting the Liquidator to take possession.

5. The facts that have been disclosed before the Court will demonstrate that an amount of Rs.2.40 lacs which was directed to be deposited in the order dated 21st December, 2000 of the Division Bench by the ex-director has not been deposited. The order of this Court dated 8th April, 2003 has permitted the Liquidator to move the Division Bench for reliefs in regard to the matter of non-deposit. Insofar as the Applicant before the Court is concerned, his claim is for the payment of security charges between the period 17th June, 1999 and 21st September, 2004. There is no reason why, subject to the verification of the bills, these charges should not be paid. The appointment of security guards has been duly ratified by a Learned Single Judge of this Court on 8th April, 2003. Consequently, security charges will have to be paid subject to the verification of the bills in

this regard. The Official Liquidator is directed to do so within a period of six weeks from today from out of the common fund. The Liquidator will be at liberty to recoup the security charges from out of the sale proceeds of the assets of the company in liquidation together with interest at the rate of 9% per annum. It is, however, clarified that this would be without prejudice to the right of the Liquidator to initiate appropriate proceedings for non compliance of the order of deposit of Rs.2.40 lacs that was passed by the Division Bench. The Company Application is accordingly disposed of.